



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Eagle Lake Field Office
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In reply refer to:
7200 (P)
CA 350

NOTICE OF FIELD MANAGER'S DECISION

Bly Tunnel Bypass Flow Valve Closure

DOI-BLM-CAN050-2012-14-CX

February 2, 2012

DECISION

It is my decision to implement the actions outlined in the Bly Tunnel Bypass Flow Valve Closure categorical exclusion (CX) which is described and analyzed in DOI-BLM-CAN050-2012-14-CX.

LAND USE PLAN CONFORMANCE

The Proposed Action is in conformance with the Eagle Lake Resource Management Plan, 2008 because it requires compliance with applicable BLM policy and federal and state laws, including fish and wildlife and water laws, and supports scientific investigations conducting monitoring and assessment of resource conditions.

RATIONALE FOR THE DECISION

The opinion of the State Water Resources Control Board (SWRCB) on the legal basis for releasing water from the valve has varied over time. However, on December 21, 2011, the BLM received a definitive statement from the SWRCB in a letter informing the BLM Field Manager that the continued release of water constitutes a waste or unreasonable use of water, and constitutes an unreasonable method of diversion. Unreasonable waste or use of water and an unreasonable method of diversion is forbidden by the California Constitution Article 10, Section 2 and of the California Water Code Section 100. It is also inconsistent with BLM Water Policy in 7250.06A and 06B which states:

- A. *Water Policy: The water policy of the BLM is that the States have the primary authority and responsibility for the allocation and management of water resources within their own boundaries, except as otherwise specified by Congress on a case-by-case basis.*
- B. *Implement Water Policy: In order to implement the BLM water policy of State water resources primacy, Bureau personnel shall:*

1. *Cooperate with State governments under the umbrella of State law to protect all water uses identified for public land management purposes.*
2. *Comply with applicable State law, except as otherwise specifically mandated by Congress, to appropriate water necessary to manage public lands for the purposes intended by Congress.*

Despite earlier concerns expressed by the California Department of Fish and Game (CDFG) about potential impacts of closing the valve to downstream water resources in Willow Creek (CDFG September 8, 2009 letter to BLM), the CDFG has dismissed that concern and has asked the SWRCB to support valve closure (CDFG October 3, 2011 letter to SWRCB).

The SWRCB, in the letter received on December 21, 2011 also reversed an earlier opinion that stated downstream (tunnel) water rights exist. The SWRCB has now issued an opinion that the downstream users have no right to divert or use water flowing from the tunnel.

Potential issues raised on the validity of water rights are outside the jurisdictional authority of the Bureau of Land Management and would thereby be brought forth and resolved by the Water Resource Board and the Court system of the State of California.

Closing the valve will have no impact to Endangered Species Act (ESA) listed species nor will it affect the historic character of the tunnel. The California State Historic Preservation Office visited the site on September 15, 2009 and determined that flowing water was not needed to maintain the character of this historic landmark. Closing the valve will facilitate continued study of the water balance of Eagle Lake. This is one part of a larger investigations being undertaken by the BLM and others to better understand and describe the water budget of Eagle Lake.

AUTHORITY

The Proposed Action is a categorically excluded action pursuant to U.S. Department of the Interior 516 DM 2 Appendix 1:

1.6 Nondestructive data collection, inventory (including field, aerial, and satellite surveying and mapping), study, research, and monitoring activities.

1.7 Routine and continuing government business, including such things as supervision, administration, operations, maintenance, renovations, and replacement activities having limited context and intensity (e.g., limited size and magnitude or short-term effects).

And U.S. Department of the Interior 516 DM 11.9:

A. Fish and Wildlife. 2. Minor modification of water developments to improve or facilitate wildlife use (e.g., modify enclosure fence, install flood valve, or reduce ramp access angle).

J. Other: 8. Installation of minor devices to protect human life (e.g., grates across mines).

ADMINISTRATIVE REMEDIES

Administrative remedies may be available to those who believe they will be adversely affected by this decision. Appeals may be made to the Office of Hearings and Appeals, Office of the Secretary, U.S. Department of Interior, Board of Land Appeals (Board) in strict compliance with the regulations in 43 CFR Part 4. Notices of appeal must be filed in this office within 30 days after publication of this decision. If a notice of appeal does not include a statement of reasons, such statement must be filed with this office and the Board within 30 days after the notice of appeal is filed. The notice of appeal and any statement of reasons, written arguments, or briefs must also be served upon the Regional Solicitor, Pacific Southwest Region, U.S. Department of Interior, 2800 Cottage Way, E-1712, Sacramento, CA 95825.

APPROVAL

The Bly Tunnel Bypass Flow Valve Closure is approved for implementation immediately.

Kenneth R. Collum
Field Manager

Date